

SPECIAL CIVIL APPLICATION No 2021 of 1997

Hon'ble MR.JUSTICE N.N.MATHUR

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

PARESH J MEHTA

Versus

GM MALVAT, ADDITIONAL REGISTRAR.

Appearance:

MR PJ MEHTA for Petitioner  
Mr S N Shelat, Addl.Advocate General for  
Respondent No. 1, 4  
MR DA BAMBHANIA for Respondent No. 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 24/10/97

C A V. JUDGEMENT

The petitioner-Paresh J Mehta, who is an Advocate

of this Court, on his own submitted his bio-data for appointment to Class-I administrative post in the High Court of Gujarat, has approached this Court by way of this Special Civil Application under Article 226 of the Constitution seeking directions to quash and set aside the promotion of respondent No.1 - G M Malvat on the post of Additional Registrar. He also seeks direction for fresh interviews for the post of Additional Registrar and prays that his case be considered. It is also prayed that an appropriate departmental enquiry be initiated against respondent No.3-Mr J K Patel, the Registrar of the High Court for false and improper submissions before the Hon'ble Chief Justice for such a class I post and for not furnishing the requirements of the post of Addl.Registrar.

2. The say of the petitioner is that respondent No.1 is simply S.S.C. and he is not eligible for appointment on the post of Addl.Registrar. His appointment is contrary to provisions of Rule 6 of the High Court of Gujarat (Recruitment & Service Conditions of Staff) Rules, 1992 (for short, 'Rules of 1992') and that it is also contrary to provisions of Article 233 (2) of the Constitution of India. So far as the qualification part is concerned, it is not being disputed by the High Court that respondent No.1 is not qualified as provided under sub-Rule (2) of Rule 6 of the Rules of 1992.

3. The case of the High Court is that the eligibility criteria has been relaxed by the Hon'ble Chief Justice in exercise of powers vested under Rule 48 of Rules of 1992. The respondent has also raised certain preliminary objection with respect to the maintainability of the present petition. The petition could be disposed of on the short ground of locus and laches but as the question involved is with respect to functioning of the Court on the administrative side. I consider it appropriate to examine the matter on merit to make the record straight.

4. Article 229 of the Constitution provides the manner in which the officers and servants of the High Court should be appointed. It provides that appointment of officers and servants of the High Court shall be made by the the Chief Justice of the High Court or such other Judge or officer of the Court as he may direct. Clause (2) provides that condition of the servants of the officers and servants of the High Court shall be such as may be prescribed by the Rules made by the Chief Justice or by some other Judge or such officers of the Court

authorised by the Chief Justice. Hon'ble Chief Justice of the Gujarat High Court in exercise of powers under Article 229 of the Constitution of India and all other enabling powers has framed the High Court of Gujarat (Recruitments and Conditions of Service of Staff) Rules, 1992 which has come into effect from 1st Day of September, 1992. Rule 5 provides that all appointment to the posts in the office of the High Court shall be made by the Chief Justice in his absolute discretion. Rule 5 reads as follows:

"5 (i) All appointments to the posts in the office of the High Court shall be made by the Chief Justice in his absolute discretion. Provided that the Chief Justice in exercise of the powers conferred upon him under Article 229 of the Constitution of India may by General or Special order, direct any other person specified in the said Article to make appointments to any post or class of posts in the Court.

(ii) The Chief Justice in exercise of his powers under Article 229 of the Constitution of India is pleased to direct the Registrar to make appointments in the class of posts specified below subject to such conditions and limitations as may be prescribed in these Rules.

(a) All Class III Servants in the High Court,

(b) All Class IV Servants in the High Court.

Provided that all such appointments shall be made by the Registrar with the previous approval of the Chief Justice."

5. Rule 6 provides various sources for appointment to the post of Registrar General or Registrar or Joint Registrar or Additional Registrar i.e. by way of promotion from the establishment of the High Court, or by transfer of a Judicial Officer not below the rank of a District Judge, or by nomination or by re-employment. Sub-clause (2) provides that to be eligible for appointment by promotion or nomination to the post of Registrar General or Registrar or Joint Registrar or Additional Registrar, a candidate must have the qualification for eligibility for appointment as a District Judge as prescribed in Article 233 of the Constitution of India. Rule 6 reads as under:

## Rule 6

"6.(i) Appointment to the post of Registrar General or Registrar or Joint Registrar or Additional Registrar shall be made either,

(a) by promotion from the establishment of the High Court, or

(b) by transfer of a Judicial Officer not below the rank of a District Judge, or

(c) by nomination, or

(d) by re-employment of a pensioner who had held the office of Registrar General, Registrar, Joint Registrar or Additional Registrar as the case may be.

(2) To be eligible for appointment by promotion or nomination to the post of Registrar General or Registrar or Joint Registrar or Additional Registrar, a candidate must have the qualification for eligibility for appointment as a District Judge as prescribed in Article 233 of the Constitution of India.

(3) Appointment to the post of Special Officer (Vigilance) and Officer on Special Duty shall be made by selection on transfer of a Judicial Officer of the cadre of District Judge, on deputation."

## Rule 47

Sub-rule (3) and sub-rule (5) of Rule 47 provides eligibility for promotion on the post of Assistant Registrar, Deputy Registrar and Additional Registrar. Sub-rule (3) says that promotion on the said post shall be strictly on the basis of efficiency and proved merit. Sub-rule (5) prohibits promotion from the lower posts to higher posts unless he has experience of 5 years in the post from which he is to be promoted. Proviso appended to sub-rule (5) empowers the competent authority to relax the requisite experience in the public interest for the reasons to be recorded in writing. Sub-rule (5) reads as follows:

"(5) No person shall be promoted from the lower post

to higher post unless he has experience of five years in the post from which he is to be promoted.

Provided that where a person having experience as specified herein is not available for promotion and it is in public interest to fill up the post by promotion of a person having experience for a lesser period for the reasons to be recorded in writing the competent authority may promote such persons"

#### Rule 48

Rule 48 is the saving clause which empowers the Chief Justice to promote in exceptional cases any court servants to any post irrespective of the fact that the incumbent fulfils the qualifications provided under the rules. Rule 48 reads as under:

"48 Nothing in the preceding Rule shall be deemed to curtail the power of the Chief Justice to promote in exceptional cases, any Court servant to any post as he may deem fit."

Rule 48 is saving clause. It means as defined by the Law of Lexicon (1987, reprint edition), a special thing out of general things mentioned in a statute. Saving clause is used to preserve from destruction, certain rights, remedy to privilege already existing. It saves all the rights a party previously had. (HORACK: cases and materials on Legislation page 572). Thus, irrespective of the qualification provided under under rule 6 (1) and (2) and Rule 47 (4), (5) for appointments on the post of Additional Registrar, the Chief Justice has power to promote a person in exceptional cases even if the incumbent does not fulfil qualifications provided under the Rules of 1992. Such a power has been vested with the Chief Justice because of the unique position he occupies in the High Court administration. The provision is in consonance withh the spirit of Article 229 of the Constitution of India.

6. Considering the powers of the Chief Justice under Article 229 of the Constitution of India, Division Bench of the Delhi High Court in the case of S C MALIK vs. P P SHARMA, reported in AIR 1982 Delhi. 83, found that Article 229 does not give any guidelines as to how a person has to be selected. It leaves open the question as to how the Chief Justice has to make the selection. It is the Chief Justice who knows what are the problems

in the Court, he knows what he wants to achieve and, therefore, his choice can be made according to the particular circumstances in which he finds himself. The Court observed that the Chief Justice is after all the Captain of the ship who seeks a steward on some dangerous voyage. The Court observed thus:

"We fancy, that in this respect the Chief Justice may be likened to a Captain of a ship who seeks a steward on some dangerous voyage. It is the Captain who knows his requirements, it is therefore, he who has to make the selection to carry his ship to safe harbour. If you have an expert, it is expected that he will know what sort of assistance he requires for a particular type of enterprises."

7. A Division Bench of Rajasthan High court, in the case of PARAMATMA SHARAN vs. HON'BLE CHIEF JUSTICE OF RAJASTHAN HIGH COURT, reported in AIR 1964 Raj. 13, dealing with the powers of Chief Justice under Article 229(1) of the Constitution of India, held that the powers given to the Chief Justice in the matter of appointment is unfettered except to the extent it is restricted by the proviso. The Court further held that in making appointments the Chief Justice exercises an administrative power and the discretion exercised by him is not justiciable. The Court observed thus -

"Now it should not be forgotten that the Constitution makers in their wisdom conferred the power of making appointment in the High Court on the Chief Justice. This power has been entrusted to the safe custody of the Chief Justice in order to ensure the independence of the judiciary which is one of the vital organs of a Government. In the long history of the High Court of India this power has always vested in the hands of the Chief Justice. Clause 10 of the Charter of the Supreme Court of Calcutta issued in 1774 authorised and empowered from time to time to appoint as many as such clerks and other ministerial officers as was found necessary for the administration of justice."

8. Thus, the power of the Chief Justice in the matter of appointment of the officers and servants of the High Court under Article 229 (1) of the Constitution is unfettered. Under the Rules of 1992, the Chief Justice

while providing the qualifications for appointment of officers and servants of the High Court has reserved the power under Savinga Clause 48. It is the sole power of the Chief Justice to appoint a person on any post in the High Court, as per the requirement of which he is the best Judge. The Chief Justice of Gujarat High Court in exercise of powers under Article 229 (2) has framed the Rules for appointmenta of officers and servants in the High court providing the qualifications and the manner of appointment while reserving his right under Rule 48, to relax the same in exceptional case. The exercise of discretion by the Chief Justice under Rule 48 is not justiciable except on the ground of malafides. It is also settled proportion of law and rules of the Court that while exercising its powers under Article 226 of the Constitution of India in a case where the administrative authority exercises it discretion in good faith and not in violation of any law, such exercise of discretion cannot be interfered with by the High Court except where there are strong and convincing ground to show that the power has been abused.

Now in the aforesaid backdrop, I may examine the merit of the impugned appointment of respondent No.1.

9. Hon'ble Justice Nayanar Sundaram. the then Chief Justice, in the year 1993, constituted a Sub-Committee of M/s.Hon'ble G T Nanavati and A P Ravani, JJ. (As Their Lordships then were) to consider the question regarding appointment of upgraded post of Additional Registrar. The Committee expressed the view that a person who has sufficient experience of the working of the High Court should be appointed on the upgraded post of Addl.Registrar and to that post, by transfer of a Judicial Officer or by nomination or of re-employment of pensioners would not be in the interest of efficient working of the establishment of the High Court. The Committee also examined the particulars of othe Dy. Registrars namely; M/s.R P Vyas, G M Malvat, D B Patel, K A Master, and D B Dholakia. After scrutinising the relevant record, the Committee found that none of the five Dy. Registrars had the minimum 5 years experience. However, the Committee, keeping in view the recommendation made in the earlier part that it would be in the interest of efficient working of the establishment of the High Court, recommended in the public interest, to fill up the post by promotion and not by any other mode. On thorough consideration of service record of all the Dy. Registrars, including reports regarding integrity, capacity and efficiency, opined that performance of Mr G M Malvat is outstanding even though Mr R P Vyas is senior

to Mr Malvat. Thus the Committee recommended in the interest of better administration of establishment of the High Court, Mr G M Malvat be appointed on the upgraded post of Additional Registrar. The office again put up a note before the Hon'ble Chief Justice B N Kripal (as His Lordship then was) that the post of Additional Registrar in the High Court is lying vacant since 17.3.1994. The Confidential Reports files and all the relevant materials of the four Dy.Registrars - M/s. G M Malvat, D B Patel, K A Master and D B Dholakia were placed before the Hon'ble Chief Justice B N Kirpal. The Hon'ble Chief Justice discussed the matter with two senior-most Hon'ble Judges namely; AP Ravani and M B Shah, JJ (as Their Lordships then were) and after obtaining their opinion, observed as under:

"Discussed with Borthor Judges AP Ravani and M B Shah.

xxx

xxx

xxx

Mr G M Malvat is the senior most Deputy Registrar, but he is not qualified as per Rules. However, as he is found to be a man of proved merit, efficiency and competence, it would be in the interest of administration to relax qualifications in his case, as a special case, exercising powers under Rule 48 of the High Court of Gujarat (Recruitment and Conditions of Service of Staff Rules), 1992, and promote him as Additional Registrar.

After retirement of Mr S C Shah, rigorous search has been made for suitable candidate to be brought either by transfer or by nomination but has not been found. The Additional Registrar being in-charge of Judicial Department but since last some time being vacant, working of the departments is adversely affected sans regular incumbent. Consequently, there is no way out to promote Mr Malvat even though does not have experience of 5 years on the post from which he is to be promoted. In the result, Mr G M Malvat is to be promoted as Additional Registrar accordingly."

It is thus evident that the exercise has been undertaken for appointment of Additional Registrar by two successive Hon'ble Chief Justices with the help of the senior most Hon'ble Judges. The Committee consisting of M/s. Justices G T Nanavati and AP Ravani) clearly expressed



that in the interest of the establishment of the High Court, appointment may be made on the upgraded post of Additional Registrar only by promotion. The Hon'ble Judges, after scrutinising the service record of the five Dy. Registrars, expressed that in their opinion, performance of Mr G M Malvat is outstanding. This exercise was again undertaken by Hon'ble Chief Justice B N Kirpal. The matter was again discussed with senior most Judges AP Ravani and Justice MB Shah and the Hon'ble Chief Justice B N Kirpal found that respondent No.1 is a man of proved merit, efficiency and competence. In view of this it was considered in the interest of the organisation to relax the requirement of qualification. Thus, the Hon'ble Chief Justice has taken a decision after having consulted the Judges of this Court and on a thorough scrutiny in the public interest.

10. The petitioner has failed to point out any convincing reason to show that the Chief Justice has in any way misused his powers. In view of this, there is no reason for me to interfere with the impugned decision of the Chief Justice in exercise of powers under Article 226 of the Constitution of India.

11. It is lastly submitted by the learned Advocate that a departmental enquiry be initiated against respondent No.3-Mr J K Patel, the Registrar of this Court for false and improper submission before the Hon'ble Chief Justice. Mr J K Patel in his affidavit stated that the Notification promoting respondent No.1-Additional Registrar on 4.2.1995 after Mr R R Jain, the then Registrar (now Judge of Madras High Court) was repatriated to City Civil Court and he was placed in-charge of the post of Registrar. He was appointed as Registrar w.e.f. 24.2.1995 and in view of this there was no occasion for him to submit any note before the Hon'ble Chief Justice. The allegations made are not only vague but false. In view of the aforesaid, the contention raised by the petitioner deserves to be rejected.

12. In view of the aforesaid, there is no merit in this Special Civil Application and the same is accordingly rejected. Rule discharged.

...  
msp.

